

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Houston, Texas

KROGER TEXAS, L.P.

Employer-Petitioner

and

Case No. 16-UC-203

UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION,
LOCAL NO. 455

Union

DECISION AND ORDER

The Employer-Petitioner filed a petition to clarify the existing bargaining unit to exclude the position of Administrative Co-Manager. The Employer contends that Administrative Co-Managers are supervisors within the meaning of Section 2(11) of the Act and therefore should be excluded from the existing bargaining unit. Based on the record, I find that the Employer has satisfied its burden of establishing that Administrative Co-Managers are supervisors within the meaning of Section 2(11) of the Act, thereby warranting their exclusion from the unit.

Under Section 3(b) of the Act, I have the authority to decide this matter on behalf of the National Labor Relations Board.

Upon the entire record in this case, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

¹ The Employer, Kroger Texas, L.P., is a limited partnership operating retail grocery stores in various cities in the State of Texas. During the past twelve months, a representative period, it derived gross revenues in

I also find that the Employer is party to a collective bargaining agreement with the Union, the term of which is April 2, 2000 to April 3, 2004. It recognizes the Union as the representative of “. . . all employees employed by Kroger Texas L.P. in stores operating in the counties of Austin, Brazoria, Brazos, Chambers, Fort Bend, Galveston, Grimes, Harris, Jefferson, Liberty, Madison, Matagorda, Montgomery, Orange, Polk, San Jacinto, Walker, Waller, Washington, Wharton, and Store #990 and Store #566, excluding all persons employed in the meat departments, store managers, co-managers, management trainees, professional employees, product demonstrators, guards and supervisors as defined in the L.M.R.A., as amended.”

It is well established that the burden of proving supervisory status is upon the party asserting it. *NLRB v. Kentucky River Community Care*, 121 S. Ct 1861, 1866-1867 (2001). The parties stipulated, and I find, that Administrative Co-Managers have the authority to hire and are supervisors within the meaning of the Act. On the basis of the foregoing and the record as a whole, I find that the Employer has satisfied its burden of proving that Administrative Co-Managers are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall clarify the unit as follows:

All employees employed by Kroger Texas L.P. in stores operating in the counties of Austin, Brazoria, Brazos, Chambers, Fort Bend, Galveston, Harris, Jefferson, Liberty, Madison, Matagorda, Montgomery, Orange, Polk, San Jacinto, Walker, Waller, Washington, Wharton, and Store #990 and Store #566, excluding all persons employed in the meat department, store managers, co-managers, administrative co-managers, management trainees, professional employees, product demonstrators, guards, and supervisors as defined in the L.M.R.A., as amended.

excess of \$500,000 from the operation of its retail grocery stores. During the same period of time, it purchased and received goods valued in excess of \$50,000 directly from points outside the State of Texas.

ORDER

IT IS HEREBY ORDERED THAT the unit is clarified to exclude Administrative Co-Managers.²

Signed at Fort Worth, Texas, this 18th day of July 2003.

/s/ Curtis A. Wells
Curtis A. Wells, Regional Director
NLRB Region 16

Classification Index

177-8500-0000

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **August 1, 2003**.

177-8520-0000